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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9923 OF 2019**

Satappa Appa Kamble Decd. Through
LR

.....Petitioner

V/s.

Bhagirathi Maruti Kamble

.....Respondent

Mr. Abhijit V. Desai for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE : OCTOBER 11, 2019.

P.C.

Heard. Petitioner is defending before the Court of Civil Judge Junior Division a Suit for mandatory injunction and removal of illegal construction.

2 In the said proceedings, respondent-plaintiff claim to have produced an Agreement which was subjected to an adjudication under the Stamps Act.

3 It appears that the document during the transit from Civil Court to Collector of Stamps have been lost. An application Exhibit 182 came to be moved by the plaintiff seeking permission to lead secondary evidence which is allowed by the order dated 05/02/2019. In addition, petitioner-defendant moved an application Exhibit 180 praying therein directions to the Collector under Section 151 of the Code of Civil Procedure, 1908 to cancel the stamping order on the document which is claimed to have been lost during the transit. As such, both these orders passed under Exhibit 180 and 182 are subject matter of challenge.

4 The submissions are, once original document was lost, the Collector has committed an error in issuing stamp certificate in relation to document of which original was not available for its adjudication. A further submission is, in the light of above, the Court below has committed an error in permitting the plaintiff-respondent to adduce secondary evidence. As such, according to him, both these orders are not sustainable. So as to substantiate the

case, attention of this Court is invited to order produced at page 57, an application moved under Section 33 of the Bombay Stamps Act and communications issued by Collector of Stamps on 28/09/2010 to the Civil Court, and also communication dated 05/10/2010.

5 If the aforesaid contentions of the learned counsel for the petitioner are appreciated, it can be inferred from the record of the Civil Court that the document which was impounded and sent for adjudication was lost during the transit and for which blame cannot be passed on the parties to the Suit. This Court is required to be sensitive to the maxim '*Actus curiae neminem gravabit*'.

6 In the aforesaid background, whether the document was duly stamped and properly accepted in an evidence, cannot be appreciated at this stage. It is always open for the petitioner-defendant to dispute the existence of such document, its admissibility in evidence at the time of final hearing based on evidence of respective parties. Once it is claimed that original document was lost during the proceedings, a foundation can be

inferred in support of prayer for leading secondary evidence.

7 That being so, in my opinion, no case for interference at this stage is made out. As such, petition is dismissed.

8 Needless to clarify that the petitioner is at liberty to canvass the issue as regards admissibility of the document in the evidence which was impounded and certified by the Collector at the stage of final hearing of the Suit.

[NITIN W. SAMBRE, J.]